IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8864 of 1995

With

SPECIAL CIVIL APPLICATION No. 8865 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DECEASED LM DESAI BY HEIR MK DESAI-DECEASED REP.BY HEIR - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR RN SHAH for Petitioner(s) : 1,
MR AY KOGJE, AGP for Respondent No.1

None for Respondent(s) : 2 & 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 05/12/2006

COMMON ORAL JUDGMENT

1. Mr. R.N. Shah, learned counsel for the petitioners in each of the petitions. Mr. A.Y. Kogje, learned AGP for the respondent no.1. None for the respondents no.2 and 3. Shri Devjibhai Kanjibhai Patel – respondent no.4 in Special Civil Application No. 8864 of 1995 is petitioner in Special Civil Application No. 8865 of 1995.
2. Mr.Shah, learned counsel for each of the petitioners submits that as there is no conflict of interest between the successors of Laljibhai and Devjibhai, they could have been joined in one petition, but to avoid any technical objection and as there were two appeals, they have chosen to file two separate writ applications.
3. On 15.10.75, by a registered sale deed, Mangabhai Narsinhbhai and Bhagubhai Morarbhai sold 4 gunthas of land of survey no. 283 situate at village Desai, Taluka-Gandevi, District-Valsad. After purchasing the land, Laljibhai Mahadevbhai informed about the sale and on 15.2.76 an entry to that effect was made in the

revenue records, but the same was not certified, the entry was ultimately rejected in the year 1980. On 27.4.82, Laljibhai Mahadevbhai Desai agreed to sell the said land in favour of Devjibhai Kanjibhai and in accordance with the terms of the agreement, he handed over possession of the land to the proposed purchaser. On 31.8.87, a notice was issued to successor of Laljibhai that why an order under Section 84[C] of the Bombay Tenancy & Agricultural Lands Act, 1948 be not made against him after annulling the sale with a direction that possession be handed over to the original owners. The case was contested by Mahadevbhai Khodabhai [successors], but however, vide order dated 20.11.89 passed in Tenancy Case No. 84/C/5090/87 the Mamlatdar-cum-ALT, Gandevi terminated the proceedings against Devjibhai Kanjibhai and Laljibhai Mahadevbhai [since deceased through heirs]. The Mamlatdar-cum-ALT directed that in accordance with the provisions of law, the possession of 4 gunthas of land be handed back to Mangabhai Narsinhbhai Patel and

Bhagubhai Morarbhai Patel. He also directed the successors of Laljibhai Mahadevbhai to pay a sum of Rs. 30,000/-. Being aggrieved by the same, successors of Laljibhai Mahadevbhai on one hand and Devjibhai Kanjibhai Patel on the other hand, filed two separate appeals which were registered as Tenancy Appeals No. 67 of 1990 and 68 of 1990, the appeals came to be dismissed on 25th March, 1991.

4. The successors of Laljibhai Mahadevbhai took up the matter to the Gujarat Revenue Tribunal in Revision No. TEN.B.S.187/91, the same was finally disposed of on 16.6.95. The learned Member of the Gujarat Revenue Tribunal, in para-9 of his judgment observed that sale of the year 1975 could not be examined under a notice dated 31.8.87. He held that initiation of the inquiry against the opponents no. 2 and 3 [original owners] and the applicant [successors of Laljibhai Mahadevbhai] could not be said to have been initiated within the reasonable time. Accordingly, he held that notices could not be issued after lapse of almost about 12 years and

no final order could be made on 20.11.89. In the final judgment, the Tribunal issued a further direction that the opponent no.4 [Devjibhai Kanjibhai] should hand over possession of the land in dispute to the successors of Laljibhai, namely, Mahadevbhai Khodabhai Desai.

5. Shri R.N. Shah, learned counsel for each of the petitioners submits that once the transaction dated 15.10.75 was held to be unchallengeable, then all the proceedings should have been dropped and quashed. The Revenue Tribunal could not proceed further and say that Devjibhai Kanjibhai should hand over possession of the land back to the successors of Laljibhai Devjibhai. He also submits that if transaction dated 15.10.75 could not be reopened, then direction for payment of Rs.30,000/- as revenue also could not be made.

6. Shri A.Y. Kogje, learned AGP for the State submits that the direction to Devjibhai Kanjibhai to hand over possession to the successors of Laljibhai Mahadevbhai is valid one and the direction to make payment of Rs.

30,000/- is also valid. On being asked that whether Devjibhai Kanjibhai was put to any notice that the agreement dated 27.4.82 being invalid and in favour of a person who was not even an agriculturist, why he [Devjibhai] be not dispossessed, Shri Kogje submits that such notice was not issued to Devjibhai Kanjibhai.

7. From the facts, it would clearly appear that notice was issued to the original owners and Mahadevbhai, successor of Laljibhai as Laljibhai died prior to initiation of the proceedings. The Mamlatdar-cum-ALT did never issue any notice to Devjibhai Kanjibhai nor did he join him as party nor did he give him any opportunity as to why he be not dispossessed. In case, the transaction dated 15.10.75 was held to be invalid, then obviously any person claiming through Laljibhai Mahadevbhai or his successors could have been ordered to be evicted, but in the case where transaction dated 15.10.75 cannot be reopened, then the successors of Laljibhai Mahadevbhai cannot be held answerable to restore the possession. Under the circumstances, anybody

claiming through successors of Laljibhai Mahadevbhai cannot be asked to hand over possession to the original owners. In any case, Devjibhai Kanjibhai, who was never issued any notice could not be asked to hand over possession to Laljibhai's successors.

8. So far as the direction to pay the sum of Rs. 30,000/- is concerned, it was consequential direction in view of the finding of Mamlatdar that the sale dated 15.10.75 was illegal. If the Tribunal has held that validity and legality of the sale dated 15.10.75 could not be examined in any subsequent proceedings, then any consequent direction cannot be allowed to stand. Under the circumstances, I must hold that the direction of Mamlatdar-cum-ALT directing the successors of Laljibhai Mahadevbhai to pay Rs.30,000/- becomes illegal and cannot be allowed to stand. It is hereby quashed. The direction issued by the Gujarat Revenue Tribunal asking Devjibhai Kanjibhai Patel to hand over possession to the successors of Laljibhai Devjibhai is also illegal and contrary to the records. It is also

quashed.

9. Both the petitions are allowed. Rule is made absolute in each of the petition. No costs.

[R.S. GARG, J.]

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